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File No. O. Rents/52
Legal Department
A **BRANCH**

Subject:— Opinions under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947

File No. O. Rents/52

256-A

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C O N T E N T S.

Legal Department File No. O.Rents/52

Sr.No.	R.I./O.No.	Subject.	Pages.
		Opinions under the Bombay Rents, Hotel and Lodging House Rents Control Act/1947.	
1.	1457 / 301/52.	Whether it is open for the Rent Controller to record evidence without examining a witness an oath, and whether the controller can refuse to supply copies of the notes of evidence to the intwested parties.	1-3.
2.	4731 / 28/3/52.	Bombay Rents Hotel and Lodging House Rates Control Act 1947-- Section 13(2).	5.
3.	4915 / 31/3/52.	Bombay Rents, Hotel and Lodging Houses Rates Control Act 1947. Section 4(1) 5(11) and 12-post other at Kapadganj.	7.
4.	8495 / 21/5/52.	Where M/s Stylish andCo., are liable to be evicted from plot No. 96 of the Suburban Scheme No. VII(Khar Model Sub after the expiry of the lease or are entitled for the protection , the Bombay Rents Hotel and Lodging Houses Rates Control Act,1947.	9.
5.	9266 / 3/6/52.	Whether it is the duty of the Land-lords to inform the D.S.P. Ahmedabad about the areas in rent.	11
6.	9900 / 13/6/52.	Bombay Rents Hotel and Lodging Houses Rates Control Act 1947 Section 4(1) Gangaram Bhuwan Nasik Termination of Lease.	13-15

A/107

contd. P.T.O.

Sr.No.	R.I.X.O.NO.	Subject.	Pages.
7.	9821 12/6/52.	Bombay Rents, Hotel and Lodging Houses Rates Control Act1947- Section 16.	17
8.	9538 7/6/52.	Where thereis objection if the business can be purchased as a going concern to the assignment as it is permissible under the Bombay Rents Hotel and Lodging House Rates Control Act 1947.	18.
9.	12298 25/6/52.	Whether it is necessary to file a suit in the court for fixing the Standard rent of less than ~~the~~ Rs.475/- in view of the certificate of the Executive Engineer.	21.
10.	8795. 27/5/52.	Bombay Rents Hotel and Loging House Rates Control Act 1947- Section 15 ~~such~~ Sub-leases	23
11.	10683 27/6/52.	Whether the lessers using and intend ~~the~~ execute assignments in favour of individual members from among them would be of the legally feasible to do so under the Govt. notification and if not what would be the difficulty	25.
12.	14026 14/7/52.	Prosecution under section 19 of the Bombay Rents Hotel and Lodging House Rates control Act, 1947.	27-31
13.	15539/E 22/9/52.	Whether Shri Ghoselkar can be evicted with reasonable force and without recourse of Law.	33
14.	19634/A 24/11/52.	Where it is open to the custodian in contravention of the provision of the Bombay Rents Hotel and Lodging House Rates, Control Act, 1947 to take a deposit in respect of the lease and to change rent in excess of the standard rent fixed by the Court.	35-3

The following two questions are raised for the R.L.A's considerations:

(1) Whether it is open to the Rent Controller to record evidence without examining a witness on oath;

(2) Whether the controller can refuse to supply copies of the notes of evidence to the interested parties.

Under section 41(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Controller is vested with power of summoning and enforcing the attendance of any person and examining him on oath. Apparently, therefore, the Controller is an authority empowered to administer oaths and affirmations under section 4 of the Indian Oaths Act, 1873. Under section 5 of the Act, oaths or affirmations shall be made by the following persons:

(a) All witnesses, that is to say, all persons who may lawfully be examined or give, or be required to give, evidence by or before any Court or person having, by law or consent of parties, authority to examine such persons or [illegible] to receive evidence; etc.

It is, therefore, clear that it is absolutely necessary that a witness should make an oath or affirmation before he can be lawfully examined by the Controller. Consequently, the procedure followed by the Controller in recording evidence of witnesses without administering oaths or affirmations was clearly illegal. Section 13 provides that no omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any of them is administered shall invalidate any proceeding or render inadmissible any evidence whatever in or in respect of which such omission, substitution or irregularity took palce, or shall affect the obligation

of a witness to state th truth. This prevision is unqualified in its terms and applies to all omissions, accidental or deliberate (Md. Qumal v.E. A1946 p.3). The irregularity committed by the Controller in the present case may not materially affect the proceedings in the present case. However, the Controller should be asked to follow the lawful procedure and to administer oath or affirmation to a witness before he is examined by him.

If the Controller has recorded evidence of witnesses, such depositions would be public documents, copies of which shall have to be furnished to the parties on payment of proper fees (see section 76 of the Indian Evidence Act).

Sd/.....

O.C.

Remembrancer of Legal Affairs.

U.R. to L.& H.D. , No. 1457, dated the 30th January 1952.

DYR.

20/6.

So.

Office of the R.I.A.

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Section 13(2).

Under section 13(2) of the Bombay Rents Hotel and Lodging House Rates Control Act,1947 the Court can grant time to a tenant for vacating the premises and in the event of his failure to vacate after the expiry of such time, he can be evicted through Court. Consequently if the Court grants time to the tenant in the present case upto 1st September 1952, he would be liable to be evicted after 1st September 1952 even if the shortage of accommodation continues thereafter. Government may therefore agree to the extension of time as requested by the Mission.

Sd/.....27/3.

Remembrancer of Legal Affairs.

U.R. to R.D. ~~xx~~.No. 4731, dated the 28th March 1952.

DYR.

20/6.

5a.

Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947.

Section 4(1) 5(11) and 12.

Post Office at Kapadvanj.

It is true that the lease under which the premises occupied by the Post Office at Kapadvanj are held expired on 31st December 1950; but before that date under Government Notification, Local Self Government and Public Health Department No.892/48(a) dated the 12th December 1950, Part II of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 was extended to Kapadvanj. Section 4(1) of this Act makes expression provision that the Act shall apply in respect of premises let to Government or a local authority.

Section 12 provides that the landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the amount of the Standard Rent and permitted increases, if anys,and observes and perform the other conditions of the tenancy. Under section 5(11) the term " tenant" has been defined to include aby person remaining after the determination of the lease, in possession with or without the assent of the landlord of the premises leased to such person etc. It is therefore clear that after the expiry of the lease on 31st December 1950, a statutory tenancy under this Act would be deemed to have come into effect and the postal authorities would be entitled to the protection under section 12 and to continue in the building on the same terms and conditions (Cf. R.L.A's opinion No. 5547,dated the 14th June 1948; and No. 6435, dated the 11th June 1949).

Sd/.....29/3.

Remembrancer of Legal Affairs.

U.R. to L.& H.D.No. 4915, dated the 31st March1952.

DIR. 20/6. Se.

Office of the R.L.A.

The land at present vests in the Government. Under certain circumstances the Government may be required to pass a conveyance of the same in favour of Hassanalli. ,Those circumstances have not materialised yet. No claim is made by Hassanalli. The lessee cannot make the claim for him . As long as the land vests in the Government the Bombay Rents, Hotel and Lodging House Rates Control Act cannot apply to it.

2 2. The lessees cannot also be allowed to raise a defence which involves the denial of the title of the land lord from whom he accepted the lease. The suit, if filed, will be therefore defendible.

O.C.
Sd/.....
Remembrancer of Legal Affairs.

U.R to R.D.No. 8495, dated the 21st May 1952.

DYR.
20/6.
Sc.

It appears that for housing policemen , a chawl consisting of 140 rooms was leased on a monthly rental of Rs.5/-per room. It is stated that no consent was given to the owners of the chawl to carry out the major repairs. In view of the repairs carried out the owners demand that they should be paid rent at Rs.10/- per month. The Home Department considers that if any increase in the rent is to be allowed, it should not exceed the amount calculated by the Executive Engineer, Ahmedabad. The Home Department suggests that at this stage,the District Superintendent of Police, Ahmedabad should communicate to the landlords his refusal to pay the increased rent at Rs.10/- per room demanded by them. The R.L.A. is requested to advise whether the suggestion is in order.

Section 4(1) of the Bombay Rents, Hotel and Lodging House ates Control Act, 1947 contains express provision that the Act shall apply in respect of premises let to Government. Since the improvement or structural alterations have not been carried out with the consent of the tenants given in writing, the landlord would not be entitled to increase in the rent under section 9 of the Act, and the Police Department would be entitled to continue to occupy the chawl on payment of the same rent. In view of the improvements made, Government may offer the landlords rent at Rs. 5-7-0 p.m. as recommended by the Executive Engineer, Ahmedabad with a suggestion that if they are not prepared to accept the rent so offered, they may apply to the Court for fixation of standard rent under section 11 of the Act; it is not necessary that Government should move the Court.(See R.L.A's No. 7205 dated the 29th June 1949).

Sd/.....2/6.
Remembrancer of Legal Affairs.

DYR.20/6/Se. U.R. to H.D.No. 9286, dated the 3rd June 1952.

Bombay Rents, Hotel and Lodging Houses Rates Control Act,1947. Section 4(1).

Gangaram Bhuman Naik.

Termination of lease.

Admittedly there is no lease executed in this case between Government and land lord. The Government telegram (Education and Industries Department) No.5307-E, dated the 30th August 1947 whereby Government offered to take the premises on lease & and the landlord's letter dated the 1st September 1947 accepting the offer do not contain any terms specifying the period of the lease. No doubt, the landlord's letter does specify that the lease may be for a period of 10 years or for the period which under law Government can take. But this does not in any way determine the period of the lease, particularly when Government did not reply to the landlord's letter regarding the period of the lease. However, when Government took the premises to accommodate the Educational Inspector's staff at a concessional rate of rent under Government Letter, Education and Industries Department No.7307, dated the 6th August 1947 for a period of two years in the first instance which was thereafter extended till 31st August 1952. Reading these circumstances together, it appears that the lease was intended to be from year to year although it is possible to argue that it was only from month to month. However, to be on the safer side, the lease may be considered to have been extended till 31st August 1952 and a month's notice may be give terminating the lease on 31st August 1952. The landlord will have, therefore, to be paid rent upto 31st August 1952.

H.L.A.'s Opinion No. 4915, dated the 31st March 1952 has no application to the present case. Under section 4(1) of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947, the premises are to be governed by the provisions of that Act and the sub-tenants of Government would not be entitled to the benefit of the Act. On the termination of the lease Government will have to give vacant possession of the premises ab to the landlord.

Sd...../2/6.
Remembrancer of Legal Affairs.

U.R. to H.D.No. 9900, dated the 13th June 1952.

DYR.
20/6.
Sa.

Office of the R.L.A.

Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947.

Section 16.

The view taken in para 3 of the L.S.G. & P.H.D. office note is correct. A Government has no power to compel a land lord to rebuild the premises even in cases covered by section 16 of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947. Consequently, the draft letter at p. 15 ante requires to be modified as it appears to suggest that Government can compel reconstruction of a building when it is vacated under the orders of the Court.

Sd...../11/6.
Superintendent of Legal Affairs.

U.O. to L.S.G. & P.H.D. No. 9821, dated the 12th June 1952.

DTH.
20/6.
50.

Attention is invited to R.LA's opinion No. 6113, dated 4th May 1950. That opinion covers the present case more especially because the assignment here is palpably colourable, since the goodwill of the business of a washerman has been transferred to a medical practitioner. The Course suggested therein of either requisitioning the premises under section 6 on the assumption of a vacancy having occurred as a result of the assignment or under section 5 - this being a business premises- can be adopted.

Sd/.....7/6.

Remembrancer of Legal Affairs.

U.R. to R.D.(Accounts.) No.9538, dated 7th June 1952.

DIR.

20/6.

50.

OFFICE OF THE R.L.A.

In view of the certificate of the Executive Engineer about the rent of Rs. 475 being reasonable and in view of Government agreeing to pay that rent the Court is not likely to fix the standard rent at less than Rs. 475. It would not therefore be advisable to file any application for fixing the standard rent. The view taken by the District Government Pleader, Ahmedabad is correct.

Sd/.....24/7.
Remembrancer of Legal Affairs.

U.R. to H.D.No. 12298, dated the 25th July 1952.

DTR.
20/6.
5e.

Office of the R.L.A.

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Section 15.

Sub-leases.

It is clear from the application of the applicants that they do not desire to assign the tenancy in favour of any person but they desire to create sub-leases in the estate held by them jointly under a a lease from H.H.Petit Charity Fund. An assignment is a transfer of the whole of a particular estate. In strict legal phraseology, an instrument does not operate as an assignment unless the grantor parts with the whole of his interest. An assignment of a term differes from an underlease in that the former means parting with the whole and the latter with only a portion of the lessee's interest. It is clear from the meaning of the term assignment that assignment permitted under the notification is different from sub-leases which the parties have already executed. The joint lessees do not at all propose to transfer their whole interest in favour of a any person; but what they propose is to divide the leased property into x separate portions and allocate them among themselves as sub-lessees. This purpose which the applicants have in view cannot be achieved by assignment and therefore the difficulties pointed out by their Solicitors are genuine. The question whether for that reason the notification should be amended as suggested should be carefully considered in consultation with the legal Department.

Sd/-.....26/5.
Remembrancer of Legal Affairs.

No. 8795 of 20/5/1952

9 The point on which R.L.A's advice is sought is: Supposing the lessees are willing and intend to execute assignments in favour of individual members from among them (and this they have affirmed at p.33/ca), would it be legally feasible to do so under the Government notification, and if not that would be the difficulty.

2. Under Government Notification, Health and Local Government Department, No.9975/33, dated the 12th May 1948 as amended by Labour and Housing Department Notifications, No.906/48, dated the 17th May 1951 and 31st May 1951, assignment of the whole interest of lessees in a part of a building plot is permissible provided such an assignment does not contravene any restrictive conditions of the lease in that regard. In view of this notification it would be open to the lessees, if they are willing to do so, to execute assignments in favour of individual members in respect of portions of the leased property, provided such assignments are now permissible under the original Head-leases.

Sd...../6.
Remembrancer of Legal Affairs.

U.O. to L.A. H.D. , No. 10683, dated the 27th June 1952.

DIR.
20/6.
Sa.

No. 12963

Office of the

Remembrancer of Legal Affairs.

Bombay Castle (Bombay No. 1), 6th August 1952.

To

The Commissioner of Police,

Bombay.

Subject: Prosecution under section 19 of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947(Bom.Act-LVII of 1947).

Sir,

With reference to your letter No.S.70/51/8035 dated the 12th July 1952, on the subject noted above, I have the honour to state that no useful purpose will be served by ~~x~~ launching prosecutions under section 19(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, in view of the decision of the Supreme Court in H.B.King vs. the Republic of India. The nature of the transactions in each of these cases is not, however, known and it is not possible to say whether any of these cases could be brought under section 18 of the Act by holding that the transaction in question was in the nature of a sub-lease and not of assignment. You may, therefore, kindly consider this aspect of the question before deciding to drop the proceedings.

2. As regards marked money, I may observe that there would be no objection to the Police retaining it as the same was provided by them. Even if it is held that the transactions in question are assignments, still any assignment being illegal under section 15 of the Act, the whole contract would be void under section 23 of the ~~x~~ Contract Act and it would not be open to the party to sue for ~~x~~ recovery of the cons-

sideration . Eventually if the party sues Government in a Court of Law, Government would get an opportunity to canvass the point and, therefore, ther would be no objection to retaining the money for the present. The success of Government would, however, depend upon the facts of each case and no general opinion can be expressed.

3. I may further state that a case involving similar points is pending before the High Court (Abdul Satar Abdul Karim v. State) and the decision in that case may be useful in taking a final decision in these matters.

Yours faithfully,

Sd/.....4/8.

Remembrancer of Legal Affairs.

DYR.
0/6.
5c.

Attention may be given invited to Remembrance of Legal Affairs opinions No. 5830, dated 13th June 1942, No. 7587, dated 11th August 1943 No. 6427, dated 9th July 1948 and No.3161, dated 24th May 1951(enclosed). The occupation of the quarters by Shri Ramaliga s was presumably subservient and necessary to Mr peoples as "Mistry" in the Mill Colony. The occupation can therefore be treated as an occupation by a servant and not by a tenant and there would be no legal objection to evicting him with reasonable force and without recourse to law.

As regards the general question of eviction of Government servants in occupation of Government quarters the only feasible course appears to be to undertake legislation facilitating summary eviction on the lines of the Government premises (Eviction) Act, 1950 (Act XXVI of 1950). It is true that the Bombay Housing Board will soon take powers under section 52A to be added by I.A. Bill XXVI of 1952, to evict certain persons from the premises of the Board, but these powers would not be available to Government for evicting Government servants from Government premises.

As regards the structures constructed in the Aarey Colony it appears it would be possible to take action for wilful trespass under section 120 of the Bombay Police Act, 1951.

Sd/.....20/9.

Remembrancer of Legal Affairs.

U.R. to Office of the Milk Commissioner No. 15539/E dated 22nd September 1952.

DTR. 20/9.52.

The main question for consideration in this case is whether it is open to the Custodian, in contravention of the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, to take a deposit in respect of the lease and to charge rent in excess of the standard rent fixed by the Court.

In P.R. Nayak v. Ramdas Bhaveshe (53 Bom.L.R. 654) it was held by Shah J.

* In whatever view of the case, the Custodian is entitled to demand possession and obtain it by exercising his authority under section 9 of the Act only in those case where the person in occupation has no right to remain in possession after the termination by the custodian under section 12(1) of the Act of his right of occupation. A tenant in possession of premises, which are evacuee property, is as much entitled to claim a protection of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as any other tenant, and a mere termination of a contractual tenancy granted by the evacuee or the Custodian in whom the property is vested does not terminate the right of the tenant to claim protection of the Statute.*

This decision was challenged in appeal but the point whether the protection of Rent Act could be claimed by the tenant of the evacuee property was left open. It is, therefore, apparent that, although the point has not been finally decided, still the opinion of Shah J . in the aforesaid case is entitled to respectful consideration until it has been actually dissented from in any subsequent case.

The Custodian in the present case subcitted to the jurisdiction of the Court of Small Cause in respect of the determination of the standard rent. He Having himself so done, he and having regard to the decision of Shah He J. in the aforesaid case, it appears that it would not be open to the Custodian to contend that the tenant could not claim protection of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947,. However, the lessee himself did agree to the payment of the municipal taxes and the continuance of the deposit with the Custodian. Having so done, it would not now be open to him to recile form that position and disclaim his liability to pay the municipal taxes/ The Custodian may, therefore, hold the lessee liable to confeem to the arrangement arrived at between him and Shri Nahar, the then Additional Custodian of Evacuee Property. If the lessee wants to challenged it he may be asked to seek relief in a Court of ~~xxxx~~ Law.

Sd.....22/11.

Remembrancer of Legal Affairs.

U.R. to R.H.H .D.No. 1963A/A dated the 24th November 1952.

D.S.(Civil).

R.L.A.

DYR.

20/6.

Sa.